

FCC MAIL SECTION

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Federal Communications Commission

DA 97-541

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Mt. Juliet and Belle Meade,
Tennessee)

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MM Docket No. 97-97
RM-9047

NOTICE OF PROPOSED RULE MAKING

Adopted: March 12, 1997

Released: March 21, 1997

Comment Date: May 12, 1997

Reply Comment Date: May 27, 1997

By the Chief, Allocations Branch:

1. The Commission has before it a Petition for Rule Making filed by Mt. Juliet Broadcasting, Inc. ("MJB"), permittee of Station WNPL, Channel 294A, Mt. Juliet, Tennessee, requesting reallocation of Channel 294A to Belle Meade, Tennessee, and modification of its construction permit to specify Belle Meade. MJB states its intention to apply for Channel 294A if it is allotted to Belle Meade as requested.

2. MJB filed its Petition for Rule Making pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989); recon. granted in part, 5 FCC Rcd 7094 (1990). As a background to the proposed reallocation, MJB states that it has been unable to implement operation on its authorized Station WNPL facility because of electromagnetic interference (EMI) to FAA air navigation facilities.¹ MJB has also included an engineering exhibit stating that due to the proximity of the Nashville International and Smyrna Airports, there is no site available

¹As a result of a complaint of interference to air navigation, Station WNPL voluntarily terminated operation on November 7, 1996. MJB has agreed to pay the costs of changing the frequencies of two FAA air navigational devices.

from which a Channel 294A allotment could provide the requisite 70 dBu coverage to Mt. Juliet without predicted interference to FAA navigational systems. MJB also states that there are no alternative channels for Mt. Juliet.

3. In order to implement an operation on Channel 294A, MJB proposes the reallocation to Belle Meade, Tennessee. According to MJB, this will result in a first local service to a community of 2,839 persons and a gain of service to 23,946 persons. MJB also notes that Belle Meade has its own police department, Methodist church, newspaper, city manager, and approximately six dozen businesses.

4. In regard to this proposal, we make two observations. First, in considering a reallocation proposal, we compare the existing allotment versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).² In this situation, we would be removing the sole local service from Mt. Juliet, a community of 5,389 persons. In view of the larger population of Mt. Juliet, we normally would not be able to find that a reallocation to the smaller community of Belle Meade would result in a preferential arrangement of channels. However, this policy would not be an impediment if the existing Channel 294A allotment at Mt. Juliet cannot be implemented due to predicted EMI interference to air navigation and the attendant air safety concerns. It is for this reason that we request specific comment regarding such interference with respect to the entire area in which a transmitter could be located in accordance with our minimum separation requirements and principal city coverage requirement.

5. Comment regarding the technical feasibility of the Channel 294A allotment at Mt. Juliet would also be relevant to the second observation. This observation concerns the fact that the proposed reallocation to Belle Meade will provide a 70 dBu signal to the entire city of Nashville, Tennessee. We will not uncritically apply a first local service preference of the FM allotment priorities when a party seeks to reallocate its channel to a suburban community of a nearby urban area. Rather, in assessing a proposal to award a first local preference to a community in an urbanized area, we apply existing precedents. See Huntington Broadcasting Co. v. FCC, 192 F. 2d 33 (D.C. Cir. 1951); RKO General (KFRC), 5 FCC Rcd 3222 (1990); Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). To this end, we request specific comment regarding the extent to which the station will provide service to the entire Nashville Urbanized Area, the relative populations of Belle Meade and Nashville, and the interdependence of Belle Meade to the Urbanized Area. Even if we were to make a finding that an allotment to Belle Meade is not entitled to a preference as a first local service, this would not preclude a finding that a Belle Meade allotment would be preferable to a technically defective allotment at Mt. Juliet.

²The FM allotment priorities are as follows: 1) First full-time aural service; 2) Second full-time aural service; 3) First local service; and 4) Other public interest matters. Co-equal weight is given to priorities (2) and (3).

6. In light of the above, we propose to reallocate Channel 294A from Mt. Juliet to Belle Meade, Tennessee, and modify the Station WNPL construction permit to specify Belle Meade as the community of license. This would provide a first local service to Belle Meade and allow MJB to implement operation on Channel 294A. Since the request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify the Station WNPL construction permit without entertaining competing expressions of interest or requiring MJB to demonstrate the availability of an additional equivalent channel for use by such parties. Channel 294A can be allotted to Belle Meade in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.6 kilometers northeast.³

7. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Mt. Juliet, Tennessee	294A	--
Belle Meade, Tennessee	--	294A

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before May 12, 1997, and reply comments on or before May 27, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Edward W. Hummers, Jr., Esq.
Holland & Knight LLP
2100 Pennsylvania Avenue, NW
Suite 400
Washington, D.C. 20037-3202
(Counsel for MJB)

³ The coordinates for Channel 294A at Belle Meade are 36-11-08 NL and 86-45-15 WL.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.